Supreme Court, U. S.
FILED
MAY 20 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1649

JEROME S. MURRAY AND WILLIAM T. ALTHOFF,
Petitioners,

v.

ALEXANDER TITLE AGENCY, INC., AND CHICAGO TITLE INSURANCE COMPANY,
Respondents.

and

JEROME S. MURRAY AND WILLIAM T. ALTHOFF,
Petitioners,

v.

CHARLES J. PILUSO,
Respondent.

BRIEF OF ALEXANDER TITLE AGENCY, INC., AND CHICAGO TITLE INSURANCE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REASONS FOR DENYING THE WRIT

1. The Supreme Court Lacks Jurisdiction Over This Appeal, Which Involves Only Questions of District of Columbia Law.

The legal issue in petitioner's claim against respondents Alexander Title Agency, Inc. and Chicago Title Insurance Company (collectively, the "Title Com-

pany")[1] is strictly a question of District of Columbia Law—specifically, the scope of an escrow agent's duties in connection with a sale of real estate. The District of Columbia Court of Appeals characterized petitioner's claim against the Title Company as:

> based on the fallacious premise that an escrow agent has a duty to voluntarily advise a buyer or seller of real estate of facts within his knowledge that may affect the relative bargaining position of the principals.

The Court of Appeals went on to hold that:

> [W]here, as here, an escrow agent carries out its escrow instructions, it has fulfilled all of its escrow duties.

Having determined that petitioner's claim was not cognizable under District of Columbia law, the Court of Appeals affirmed the trial court's order granting summary judgment in favor of the Title Company.

This Court has no jurisdiction to review a decision by the District of Columbia Court of Appeals on a question of District of Columbia law. The jurisdictional statute on which petitioners rely, 28 U.S.C. 1257, provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

[1] Petitioner's claim against respondent Charles J. Piluso involved a different issue—alleged fraud.

> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.
>
> For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

None of the federal issues set forth in paragraph 3 of the statute are present here; therefore, the Supreme Court lacks jurisdiction to grant a writ of certiorari. This Court has held many times that it has no power to revise the judgment of state courts on questions of state law. *Henry* v. *Mississippi,* 379 U.S. 443; *Scripto, Inc.* v. *Carson,* 362 U.S. 207; *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94; *Hammerstein* v. *Superior Court,* 340 U.S. 622.

Petitioners, relying on fragmentary scraps of evidence, assert that the District of Columbia Court of Appeals disregarded an allegedly controlling decision of this Court, *Citizen's National Bank* v. *Davisson,* 229 U.S. 212. This assertion is plainly incorrect. Nothing in the decision below was inconsistent with this

Court's ruling in *Davisson.*[2] More importantly, however, *Davisson* is not controlling precedent on questions of District of Columbia law.

Davisson, which was decided in 1913, involved an appeal from the Supreme Court of the Territory of New Mexico. The case was not decided under District of Columbia law, or even under New Mexico law, but rather under the old federal common law, which was repudiated in 1938 in the landmark case of *Erie R. Co.* v. *Tompkins,* 304 U.S. 64. Clearly, therefore, this Court's holding in *Davisson* is not binding on the District of Columbia Court of Appeals as to the obligations of an escrow agent under District of Columbia law. Consequently, even if the District of Columbia Court of Appeals had disregarded *Davisson,* which it did not, no writ of certiorari would lie. The court below, not this Court, is the ultimate authority on District of Columbia law.

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[2] *Davisson* held merely that a bank, acting as escrow agent in a real estate transaction, could not rely solely on a written memorandum that was "unintelligible except by reference to the contract of sale." This is in accord with the widely accepted principle that an escrow agent should not disburse funds on the basis of instructions that are unclear.

We have no quarrel with this principle, but it is inapplicable here. As the opinion of the District of Columbia Court of Appeals plainly shows, the Title Company merely carried out escrow instructions that were clear and unambiguous. Hence, the Title Company had no liability to petitioners, who had approved those instructions.

2. The Decision of the District of Columbia Court of Appeals Was Correct.

The *per curiam* opinion of the District of Columbia Court of Appeals is lucid and well-reasoned. To elaborate on that opinion would serve no purpose. We invite the Court's attention to the opinion below, which is plainly correct.

CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,

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